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May 5, 2000

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Dear BCT members:

Enclosure (1) is provided for your files regarding the April 13, 2000 Land Use Control Implementation Plan (LUCIP) meeting for Parcel B, Hunters Point Shipyard. Copies of this letter and the attachment have been sent via e-mail to the entire distribution list.

Should you have any questions concerning this information, please contact me at (619) 532-0913.

Sincerely,

RICHARD G. MACH JR., P.E.  
BRAC Environmental Coordinator  
By direction of the Commander

Enclosure: (1) Final Parcel B LUCIP Scoping Meeting Minutes, Hunters Point Shipyard,  
May 5, 2000

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**PARCEL B LUCIP SCOPING MEETING  
HUNTERS POINT SHIPYARD  
MEETING MINUTES  
April 13, 2000**

These meeting minutes summarize discussions regarding the scoping for the land use control implementation plan (LUCIP) for Parcel B, Hunters Point Shipyard (HPS). The meeting was held on April 13, 2000, at the U.S. Environmental Protection Agency (EPA) office in San Francisco, California. The meeting was attended by the Base Realignment and Closure (BRAC) Cleanup Team (BCT), including the EPA, the California Department of Toxic Substances Control (DTSC), and the California Regional Water Quality Control Board (RWQCB). The meeting was also attended by the City of San Francisco (City) and its developer, Lennar/Bayview Hunters Point (Lennar/BVHP). A list of attendees is included at the end of these minutes. These minutes discuss the key points, decisions, and action items agreed to at the meeting.

**AGENDA**

- I. Participant Introductions
- II. Statements of Goals and Expectations
- III. Discussion of parcel B ROD Requirements
- IV. Review of Actions Already Taken
- V. Scope Contents of LUCIP
- VI. Further Discussion of the Nature of Property Restrictions and Their Documentary Form
- VII. Recap of Items Needing Further Discussion and Follow-up

**I. PARTICIPANT INTRODUCTIONS**

Participants at the meeting introduced themselves and their organizations. A list of participants is included as an attachment to these minutes.

**II. STATEMENTS OF GOALS AND EXPECTATIONS**

The Navy opened the meeting by suggesting that each party indicate its intended goals to be achieved during the meeting.

DTSC would like to know what the Navy's intentions are and its plans to fit the LUCIP into the existing Federal Facility Agreement (FFA) schedule for cleanup and transfer.

EPA noted that the content of the LUCIP has already been determined as presented in the seven elements contained in the Parcel B remedial design appendix. EPA clarified that it wants to ensure that the U.S. Government maintains a property interest in Parcel B. The Navy clarified that it intends to assume the role as the U.S. Government agency.

The RWQCB identified concerns related directly to public perceptions of institutional controls. Specifically, the RWQCB has received comments from the public stating that landuse controls inappropriately force the developer to pay for investigation and characterization costs, instead of such costs being addressed by the Navy.

The City distributed a matrix outlining its intentions regarding the LUCIP and other land use control documents. The City noted that it developed the matrix with the intent of meeting the City's view of the

LUCIP and the interests of the various stakeholders. The City expressed concerns regarding the existing memorandum of agreement (MOA) among the Navy and DTSC, stating that the MOA is not applicable to an early transfer scenario. The City suggested that it would rather discuss the LUCIP in terms of its matrix instead of the MOA.

The City's proposal allows for the covenant to identify roles and responsibilities for land use controls enforcement, monitoring and reporting by the regulators and City implementation through a soil and groundwater management plan, which could be incorporated into a City permitting process. The City wishes that the Navy, City, and regulators would agree on all roles, responsibilities, soil and groundwater management plan, etc. up front. The City expressed a goal to remove the inherent uncertainty associated with the overlap of three current regulatory agencies involved in the HPS program. The City would like the community and developers to have the assurance that if they follow the appropriate ordinance and permitting processes, then they would be free from enforcement actions. The City expressed that this is important because of the current lack of detail regarding the government's property interests.

EPA and DTSC expressed concern regarding potential development, permitted or not, within areas of potential environmental concerns without regulatory oversight or enforcement. DTSC also speculated regarding the specificity of the management plan pertaining to different construction scenarios. For example, a small utility excavation might not cause much concern regarding future liability, but a subterranean parking structure would. The Navy speculated that if the City issued an indemnification clause to the Navy at areas where permits have been approved, its concerns regarding property interests would be less critical.

EPA suggested that having overlapping agency enforcement (tiering) would successfully stop changes in the land use, since all changes must adhere to the existing covenants, conditions, and restrictions (CCR). Conversely, reliance upon City permitting processes and City ordinances could theoretically alter effectiveness of the land use controls. The City envisions that City ordinances, permits, and other planning documents would reference the land use controls, ensuring that a change in a City document could not alter the intent of the land use controls.

The City clarified that they would prefer a deed without restrictions, and would instead reference a code or the CCR, and therefore be recorded in the county register and also accompany the deed. The City noted that the intent is that the deed would never change; however, the CCR can change if the institutional controls change. EPA agreed it is comfortable with the general concept of a quitclaim deed accompanied by a restricted covenant, provided that the regulatory agencies and the Navy have the opportunity to review or approve the proposed changes. DTSC conceptually agreed with the EPA assessment.

### **III. DISCUSSION OF PARCEL B ROD REQUIREMENTS**

The Navy clarified that the inclusion of text in the ROD arose as a result of discussions between EPA and Navy regarding deed language. The ROD language resulted in the Parcel B remedial design appendix identifying a LUCIP as a primary document. As a primary document, and in accordance with the FFA, the Navy feels resolution of the scope and content must primarily be addressed by the BCT.

### **IV. REVIEW OF ACTIONS ALREADY TAKEN**

Navy and DTSC have agreed to two model land use covenants indicating the enforcement restrictions. One focuses on site mitigation/CERCLA conditions; the other on RCRA.

## **V. SCOPE CONTENTS OF LUCIP**

Assuming that a covenant document is adopted, it is unclear who would take primary/secondary enforcement roles. City suggested that roles and responsibilities should be similar to the agreement in the FFA, where a dispute mechanism could be included. The City offered to assist with the preparation of such an interagency agreement (IAG), provided that a description of the proprietary interest is also resolved. The City would prefer that all the details be included in the covenant, but EPA disagreed. EPA does not feel enforcement roles and responsibilities should be recorded. The City clarified that the IAG would document those roles and responsibilities.

RWQCB sees this as a regulatory program that is not currently included within their scope of work, including auditing or permitting costs.

DTSC expressed concerns regarding an IAG instead of just strict enforcement of each agency's laws. For example, if a construction activity causes environmental concerns, DTSC does not want a landowner or developer stating that they have a permit, and that regulatory policing authority is not applicable. DTSC mentioned that it is concerned that the City will basically be responsible for self-policing, given that public works or other City agencies could be primary construction and developers at the site.

EPA also stated it would not like to limit its authority regarding a transfer action to the City.

The Navy offered its opinion regarding the ineffectiveness of an IAG to resolve the regulatory overlap situation; however, it has the same concerns regarding the ability for a regulatory tiering approach to resolve the regulatory overlap situation.

EPA feels that the LUCIP can outline the roles and responsibilities, but that a detailed scoping and review of the soil management plan is critical to the ultimate success of the execution of land use controls. EPA expressed the concern that the LUCIP should specify in adequate detail the execution of the institutional controls; otherwise, EPA will not be able to concur with the final remedial action documents.

The City suggested one covenant and one organization to enforce the restrictions therein; however, EPA and DTSC have each suggested their own covenants to be referenced in the deed. The City noted that it wants to be a party to the covenant; however, EPA noted that a property owner may be signatory to the covenant, but that the owner would not retain the authority to amend the covenant.

Procedurally, the group agreed that a CCR should be prepared prior to the quitclaim deed.

The City noted that ArcEcology has expressed a concern regarding the execution and enforcement of institutional controls, and has expressed interest in providing support to the documentation and usefulness of institutional controls and management plans.

## **VI. FURTHER DISCUSSION OF THE NATURE OF PROPERTY RESTRICTIONS AND THEIR DOCUMENTARY FORM**

The Navy views the institutional controls as key aspects of the remedy, and enforcement thereof directly impacts the effectiveness of the remedy. The Navy is responsible for the execution of the remedy, post-ROD enforcement.

EPA suggested that the group consider precedents regarding NPL transfers. The City and Navy indicated that preliminary reviews have not identified conditions similar to HPS; however, a transfer at Watertown,

MA maybe relevant to HPS. The City noted that it has reviewed other relevant NPL and non-NPL transfers in preparing its matrix.

The Navy offered comments regarding the soil and groundwater management plan, including what consideration should be made for where the document(s) merge chronologically with the real estate and cleanup documentation. Additionally, the Navy questioned how the LUCIP will be able to reference the soil and management plan if it has not been prepared, and where will the chain of title document be able to reference the details within the plans if they have not been previously specified?

## **VII. RECAP OF ITEMS NEEDING FURTHER DISCUSSION AND FOLLOW-UP**

The Navy will prepare a preliminary draft LUCIP to the BCT and City of San Francisco in a continuing effort to develop a document, which meets the needs of the various parties. The submittal will include areas the Navy suggests need further clarification and discussion. The Navy listed several topics currently unresolved, including signatories to the CCRs, and roles and responsibilities presenting in the land use covenant.

## **OTHER ANNOUNCEMENTS**

The Navy announced that the Navy and City representatives are currently planning a discussion from 1:00 to 5:00 p.m. on April 25, 2000 to discuss early transfer cost assumptions and technical input parameters; the BCT is invited to attend this meeting. A backup date of April 27, 2000 was identified in the event of scheduling conflicts with April 25, 2000.

## **ACTION ITEMS**

Action items from this meeting are presented below.

<b>Action</b>	<b>Responsible Party</b>	<b>Date Due</b>	<b>Date Accomplished</b>
<b>Parcel B.</b> The EPA will provide the Navy with guidance regarding protocols and criteria associated with National Priority List delisting procedures.	Claire Trombadore (EPA)	To be determined	Availability on EPA website announced at BCT meeting on April 27, 2000
<b>Parcel B.</b> The Navy will provide a preliminary draft version of the LUCIP for BCT review prior for further scoping and discussion purposes.	Nick Bollo/Richard Mach (Navy)	May 10, 2000	
<b>Parcel B.</b> The Navy will provide a draft LUCIP for BCT review	Richard Mach (Navy)	June 6, 2000	

## LIST OF ATTENDEES

Organization	Name	Phone Number	E-Mail Address
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